DOCUMENTS

de la

CONFERENCE DES NATIONS UNIES
SUR L'ORGANISATION INTERNATIONALE
SAN FRANCISCO, 1945

Tome XVI

INDEX

Edités en collaboration avec la LIBRARY OF CONGRESS

1946

UNITED NATIONS INFORMATION ORGANIZATIONS

LONDRES NEW YORK

DOCUMENTS

of the

UNITED NATIONS CONFERENCE
ON INTERNATIONAL ORGANIZATION
SAN FRANCISCO, 1945

Volume XVI

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UNITED NATIONS INFORMATION ORGANIZATIONS

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EDITOR'S NOTE

The present volume includes, in addition to the Index, several documents which were lacking at the time the body of documents was being collected and prepared for reproduction.

The main purpose of this publication was to make available without delay, if possible in time for the first session of the General Assembly, and in a convenient arrangement, the documents of the San Francisco Conference on International Organization, within the limits prescribed by the Conference itself.

Every effort was made at the time to include all the documents falling within the scope of the publication. However, it soon developed that no absolutely complete set of the documents was available. Also, it was found that because of the great pressure on the Secretariat during the final stages of the Conference it had not been possible to revise and correct the two lists of documents issued, Doc.1184 G/125 and Doc.1218 G/134. In checking the documents against these lists, it was discovered that in a few cases translations of certain documents had been listed which did not exist and conversely, that a few documents had not been listed at all. It further appeared that certain documents produced during the last days of the Conference had not been distributed although the stencils were in existence. Officials of the United States Department of State then very kindly arranged to have these stencils reproduced which made possible the inclusion of the documents.

When a master set of the documents of the San Francisco Conference was collected from the United Nations Archives for official use of the General Assembly in London and checked against the present edition, it was found that Document 25 DC/1 reproduced in vol.V, p.3-20, lacked two charts: that Doc. 25 DC/1(a) reproduced in vol.V, p.38-45, lacked one chart: and that the French version of Doc. 28 DC/2(a), which had been issued without document number or symbol, was entirely lacking. It should have followed the English version in vol.V, p.46-49.

Finally, it was discovered that Doc. 1160 I/2/76 (1) French had been reissued, with a change on page 5, as Doc. 1178 I/2/76 (2), but that it had been mistakenly issued with the old number 1160. This explains the absence of the *real* Doc. 1160 I/2/76 (1) from the present edition.

Thus, the number and symbol of the document reproduced in vol. VII, p.315-323, should be corrected to read Doc. 1178 I/2/76 (2). The original Doc. 1160 I/2/76 (1) French is given in the present volume. The English versions as published in vol. VII are correct.

January 1947

José Meyer
Editor

NOTE DE LA REDACTION

Le dernier volume comprend en plus de l'index quelques documents qui faisaient défaut à l'époque où fut rassemblée la documentation de la Conférence de San Francisco en vue de sa publication.

Cette publication avait été entreprise pour servir aux besoins de l'Assemblée Générale dans le plus bref délai et pour faciliter la consultation d'une masse de documents par un classement logique et pratique à la fois. On avait essayé à l'époque de réunir la totalité des documents dont la publication avait été approuvée par la Conférence elle-même. Mais on a bientôt dû se rendre compte qu'il n'existait alors aucune collection vraiment complète de ces documents.

D'autre part, le temps avait manqué à San Francisco pour revoir et corriger les deux listes de documents qui avaient été publiées vers la fin de la Conférence sous les numéros Doc.1184 G/125 et Doc.1218 G/134 respectivement. C'est ainsi que lors de la vérification de ces deux listes par rapport aux documents en main on trouva mention de traductions de documents qui n'existaient pas, alors que d'autres documents n'y figuraient pas du tout. On découvrit également que par suite du surmenage du Secrétariat pendant les derniers jours de la Conférence certains documents n'avaient jamais été polygraphiés alors que les stencils existaient. Grâce à l'obligeance des fonctionnaires du Département d'Etat des Etats-Unis ces stencils furent utilisés alors et les documents polygraphiés, ce qui permit leur inclusion dans l'ouvrage.

Plus tard, à Londres, une collection complète des documents fut tirée des archives pour usage officiel. Au cours de la vérification de cette collection par rapport à la présente édition les omissions suivantes furent constatées:

Deux chartes manquent au document 25 DC/1 (vol.V,p.3-20): une charte manque au document 25 DC/1(a) (vol.V,p.38-45); la version française du document 25 DC/2(a), qui avait été publiée sans numéro et sans symbole, manque entièrement alors qu'elle aurait dû suivre le document en langue anglaise qui figure dans le volume V,p.48-49.

Finalement on constata que le document 1180 I/2/76(1) en langue française avait été réédité avec un changement à la page 5 comme document 1178 I/2/76(2), mais que par erreur ce nouveau document portait l'ancien numéro 1180. C'est ainsi que le document original, 1180 I/2/76(1), avait été omis dans la présente publication.

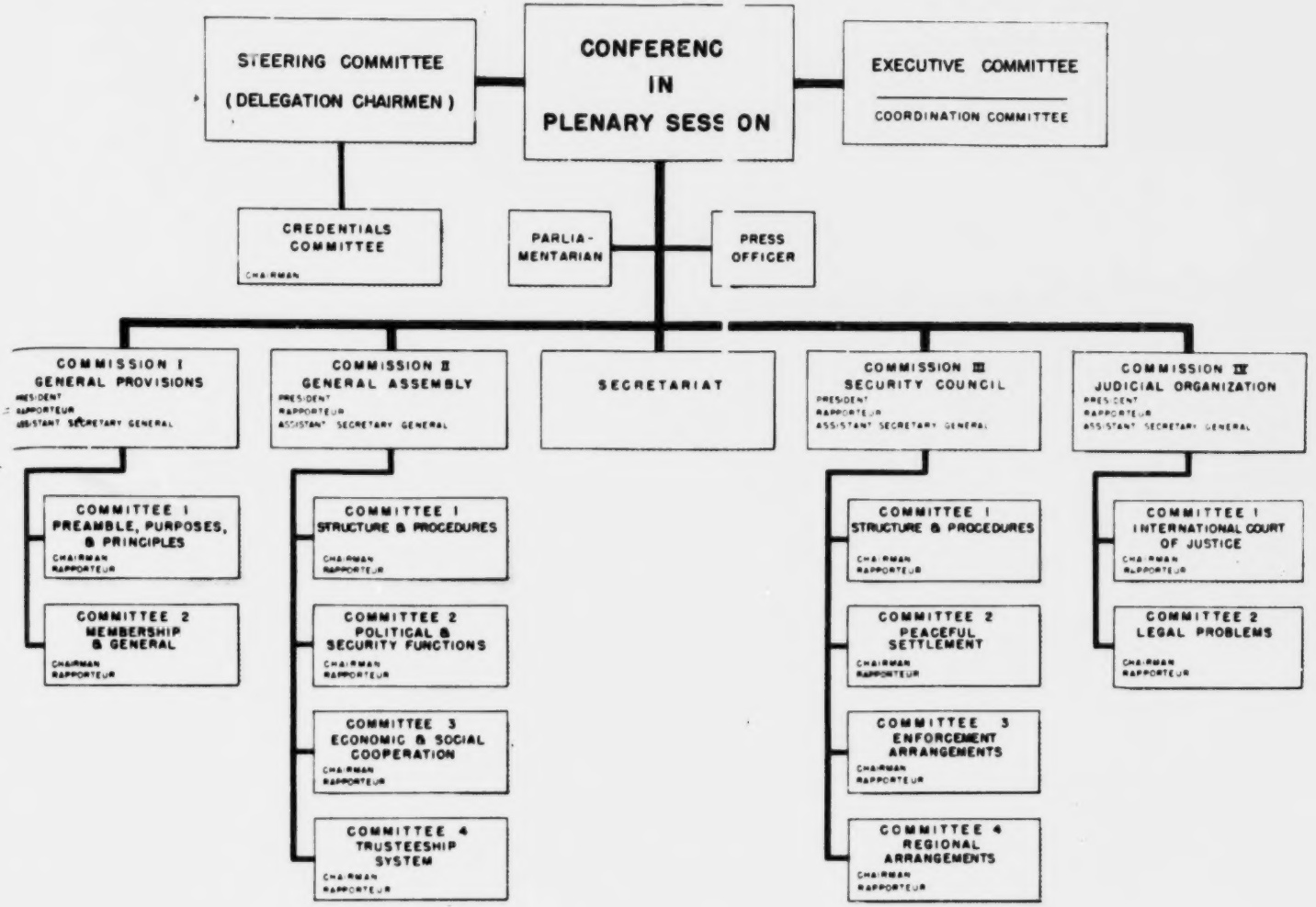
Le numéro du document figurant dans le volume VII,p.315-323 devrait être corrigé, car c'est en réalité le document 1178 I/2/76(2). Le véritable document 1180 I/2 76(1) en langue française est reproduit dans le volume présent, ainsi que les trois chartes et le document 28 DC 2(a) mentionnés plus haut. Les deux documents en langue anglaise 1180 I 2/76(1) et 1178 I/2/76(2) sont corrects tels qu'ils figurent dans le volume VII, p.308 et 324 respectivement.

Janvier 1947

José Meyer
Rédacteur

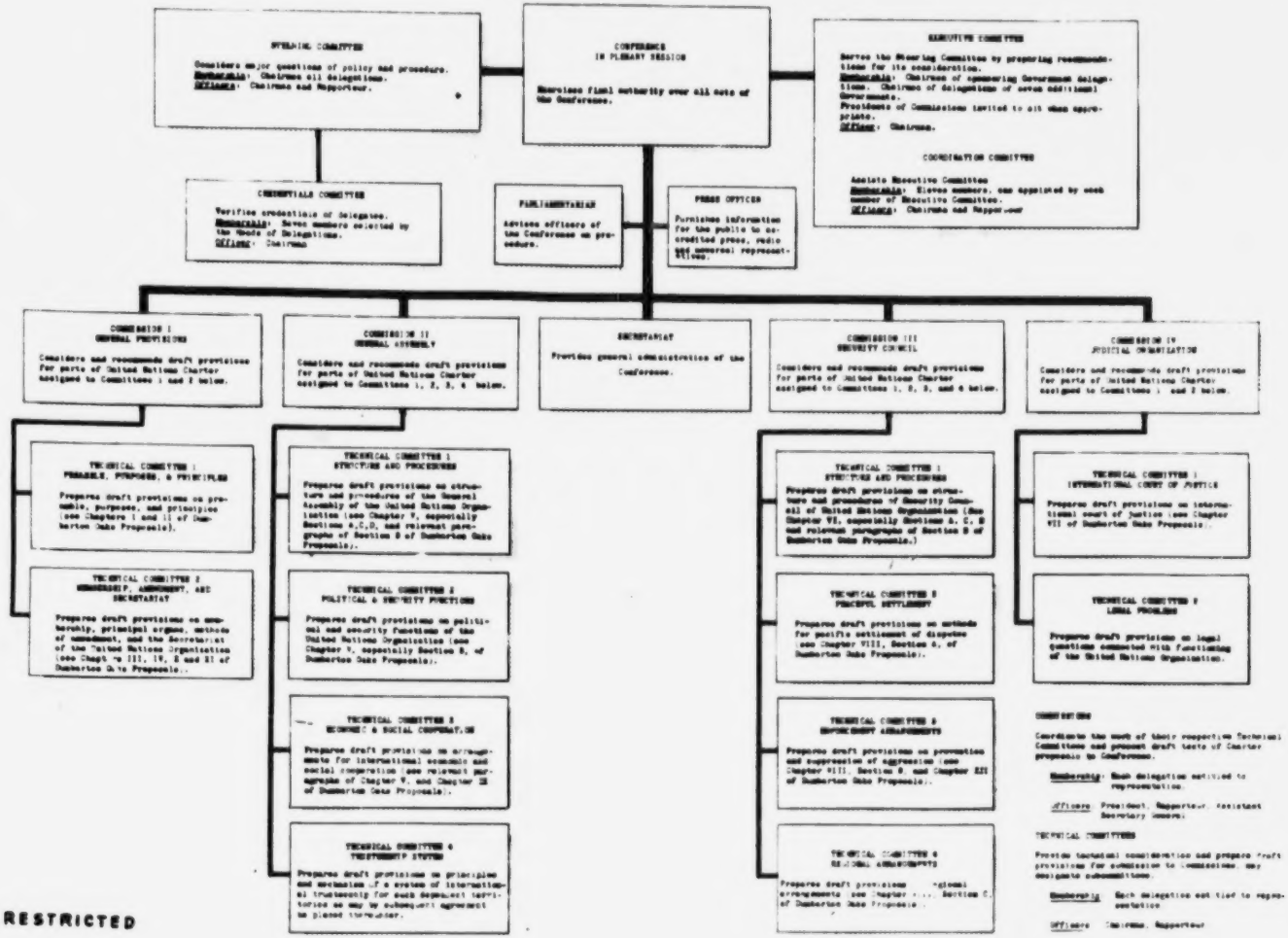
Doc. 25
DC/1

PROPOSED ORGANIZATION: UNITED NATIONS CONFERE E ON INTERNATIONAL ORGANIZATION



Doc. 25
DC/1

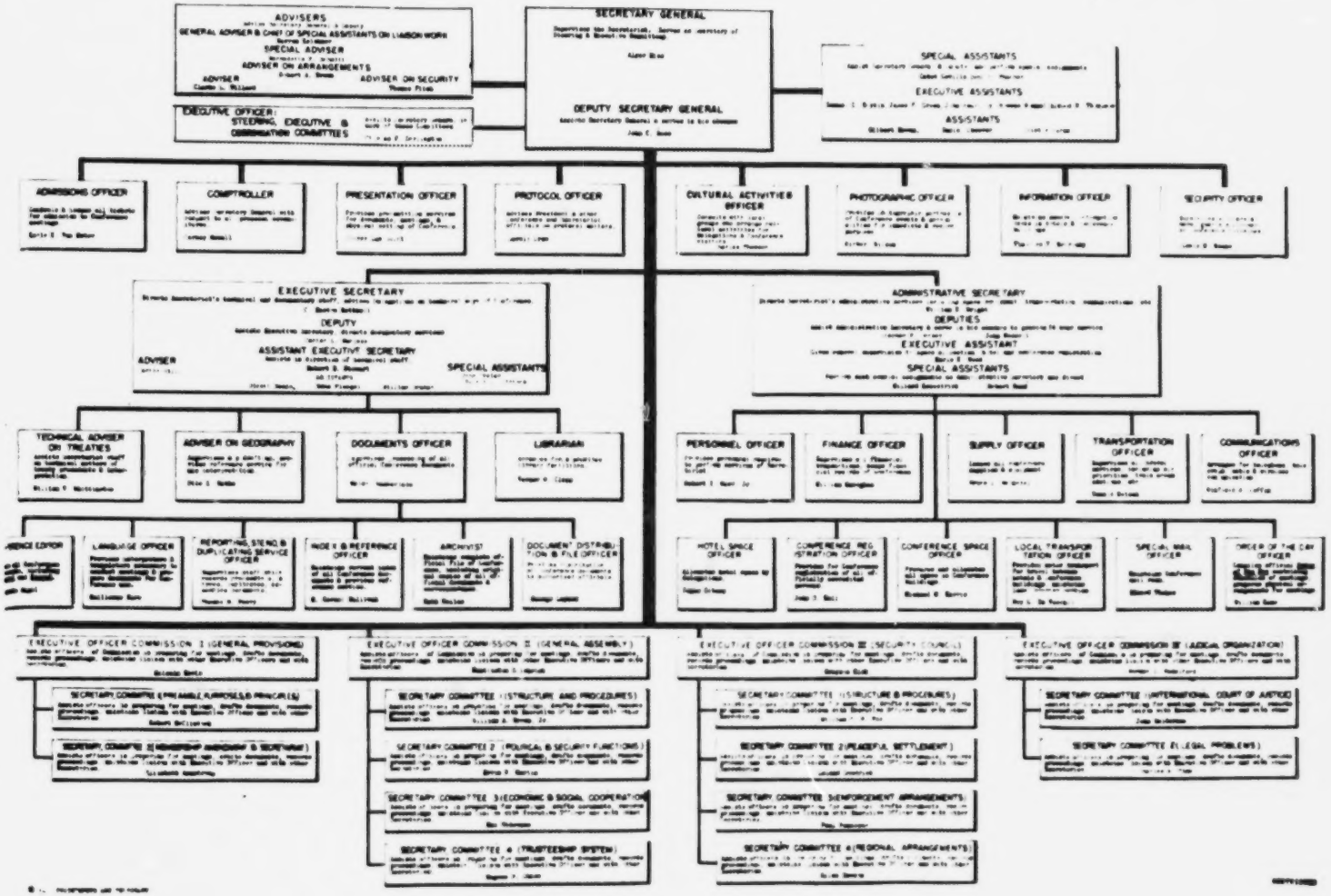
PROPOSED ORGANIZATION & FUNCTIONS: UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION


STEERING COMMITTEE
Considers major questions of policy and procedure.
Membership: Chairmen all delegations.
Officers: Chairman and Rapporteur.
CONFERENCE IN PLENARY SESSION
Exercises final authority over all acts of the Conference.
EXECUTIVE COMMITTEE
Serves the Steering Committee by preparing recommendations for its consideration.
Membership: Chairmen of sponsoring Government delegations. Chairmen of delegations of seven additional Governments.
Presidents of Commissions invited to sit when appropriate.
Officers: Chairman.
COORDINATION COMMITTEE
Assists Executive Committee
Membership: Eleven members, one appointed by each member of Executive Committee.
Officers: Chairman and Rapporteur
CREDENTIALS COMMITTEE
Verifies credentials of delegates.
Membership: Seven members selected by the Heads of Delegations.
Officers: Chairman
PARLIAMENTARIAN
Advises officers of the Conference on procedure.
PRESS OFFICER
Furnishes information for the public to accredited press, radio and cinereel representatives.
COMMISSION I
GENERAL PROVISIONS
Considers and recommends draft provisions for parts of United Nations Charter assigned to Committees 1 and 2 below.
COMMISSION II
GENERAL ASSEMBLY
Considers and recommends draft provisions for parts of United Nations Charter assigned to Committees 1, 2, 3, 4 below.
SECRETARIAT
Provides general administration of the Conference.
COMMISSION III
SECURITY COUNCIL
Considers and recommends draft provisions for parts of United Nations Charter assigned to Committees 1, 2, 3, and 4 below.
COMMISSION IV
JUDICIAL ORGANIZATION
Considers and recommends draft provisions for parts of United Nations Charter assigned to Committees 1 and 2 below.
TECHNICAL COMMITTEE 1
PREAMBLE, PURPOSES, & PRINCIPLES
Prepares draft provisions on preamble, purposes, and principles (see Chapters I and II of Dumbarton Oaks Proposals).
TECHNICAL COMMITTEE 2
MEMBERSHIP, AMENDMENT, AND SECRETARIAT
Prepares draft provisions on membership, principal organs, methods of amendment, and the Secretariat of the United Nations Organization (see Chapters III, IV, X and XI of Dumbarton Oaks Proposals).
TECHNICAL COMMITTEE 1
STRUCTURE AND PROCEDURES
Prepares draft provisions on structure and procedures of the General Assembly of the United Nations Organization (see Chapter V, especially Sections A,C,D, and relevant paragraphs of Section B of Dumbarton Oaks Proposals).
TECHNICAL COMMITTEE 2
POLITICAL & SECURITY FUNCTIONS
Prepares draft provisions on political and security functions of the United Nations Organization (see Chapter V, especially Section B, of Dumbarton Oaks Proposals).
TECHNICAL COMMITTEE 3
ECONOMIC & SOCIAL COOPERATION
Prepares draft provisions on arrangements for international economic and social cooperation (see relevant paragraphs of Chapter V, and Chapter IX of Dumbarton Oaks Proposals).
TECHNICAL COMMITTEE 4
TRUSTEESHIP SYSTEM
Prepares draft provisions on principles and mechanism of a system of international trusteeship for such dependent territories as may by subsequent agreement be placed thereunder.
TECHNICAL COMMITTEE 1
STRUCTURE AND PROCEDURES
Prepares draft provisions on structure and procedures of Security Council of United Nations Organization (See Chapter VI, especially Sections A, C, D and relevant paragraphs of Section B of Dumbarton Oaks Proposals.)
TECHNICAL COMMITTEE 2
PACIFIC SETTLEMENT
Prepares draft provisions on methods for pacific settlement of disputes (see Chapter VIII, Section A, of Dumbarton Oaks Proposals).
TECHNICAL COMMITTEE 3
ENFORCEMENT ARRANGEMENTS
Prepares draft provisions on prevention and suppression of aggression (see Chapter VIII, Section B, and Chapter XII of Dumbarton Oaks Proposals).
TECHNICAL COMMITTEE 4
REGIONAL ARRANGEMENTS
Prepares draft provisions [illegible] regional arrangements (see Chapter [illegible], Section C, of Dumbarton Oaks Proposals).
TECHNICAL COMMITTEE 1
INTERNATIONAL COURT OF JUSTICE
Prepares draft provisions on international court of justice (see Chapter VII of Dumbarton Oaks Proposals).
TECHNICAL COMMITTEE 2
LEGAL PROBLEMS
Prepares draft provisions on legal questions connected with functioning of the United Nations Organization.
COMMISSIONS
Coordinate the work of their respective Technical Committees and present draft texts of Charter proposals to Conference.
Membership: Each delegation entitled to representation.
Officers: President, Rapporteur, Assistant Secretary General.
TECHNICAL COMMITTEES
Provide technical consideration and prepare draft provisions for submission to Commissions. May designate subcommittees.
Membership: Each delegation entitled to representation
Officers: Chairman, Rapporteur

RESTRICTED

PROPOSED ORGANIZATION & FUNCTIONS OF SECRETARIAT

The United Nations Conference on International Organization



Circulation restreinte.

CONFÉRENCE DES NATIONS UNIES
SUR L'ORGANISATION INTERNATIONALE

RÉUNION DES PRÉSIDENTS DES DÉLÉGATIONS EN VUE D'ORGANISER
LA CONFÉRENCE

Ordre du jour provisoire

Il est suggéré que les chefs de toutes les délégations se réunissent le [illegible] à Belgo du matin, sous la présidence du Président intérimaire de la Conférence pour étudier les questions suivantes :

1. Nomination du Comité de Vérification des Pouvoirs et désignation de son Président. Le Président intérimaire de la Conférence, après consultation des Chefs des autres Délégations (il est suggéré que le Comité de Vérification des Pouvoirs se réunisse immédiatement et que son rapport soit prêt [illegible] Session Plénière qui se tiendra le [illegible]).

2. Nomination [illegible] Réunion par le Président Intérimaire de la Conférence avec l'approbation des Chefs des autres Délégations.

3. Recommandation que la Conférence donne son approbation à un mémorandum sur l'ordre du jour provisoire proposé pour la Conférence.

4. Nomination du Président [illegible] Présidents de la Conférence.

5. Nomination du Comité Exécutif.

6. Nomination des membres [illegible] pays dont les représentants seront nommés) des quatre Commissions et des deux Comités Techniques de la Conférence.

7. Recommandation que la Conférence adopte comme Ordre du Jour les Propositions de Dumbarton Oaks complétées par celles de la Conférence de Crimée et les commentaires soumis par les pays participants.

8. Recommandation que la Conférence donne son approbation aux Règles de Procédure proposées.

9. Déclaration de la Délégation Soviétique au sujet de la décision de la Conférence de Crimée relative à une invitation aux Républiques Socialistes Soviétiques de l'Ukraine et de la Russie Blanche de devenir membres fondateurs de l'Organisation Internationale de Sécurité.

The United Nations Conference on International Organization

RESTRICTED
Doc. 1160 (FRENCH)
I/2/78 (1)
June 11 1945

COMMISSION I General Provisions

Comité 2 Membres, Amendements et Secrétariat

RAPPORT DU RAPPORTEUR DU COMITE I/2

SUR LE CHAPITRE III (MEMBRES)

(adopté à l'unanimité présenté par les soins du Comité)

Le Chapitre III du Plan de Dumbarton Oaks était ainsi conçu:

"Devrait pouvoir être membre de l'Organisation tout Etat épris d'un idéal de Paix."

Ce texte, qui a été élargi au cours de nos discussions, le Comité I/2 désire le présenter à la Commission I, sous la forme suivante:

"Sont membres originaires de l'Organisation les Etats signataires de la Charte dont la ratification aura devenue effective conformément aux termes du Chapitre , Article ",

"L'Organisation est ouverte à tous les Etats épris d'un idéal de paix qui acceptent les obligations contenues dans la Charte et qui, au jugement de l'Organisation, sont aptes et résolus à les exécuter".

"L'Organisation pourra à tous moments suspendre l'exercice des droits et privilèges conférés aux membres de l'Organisation pour tout membre contre lequel auront été prises des mesures préventives ou coercitives par le Conseil de Sécurité. L'exercice de ces droits et privilèges pourra être restitué conformément à la procédure fixée au Chapitre..... paragraphe....."

"L'Organisation pourra exclure de son sein tout membre qui persisterait à violer les principes de la Charte".

Les travaux du Comité I/2 ont porté sur les questions suivantes que nous considérerons successivement, sans négliger d'établir, quand cela sera nécessaire, les liens naturels qui les

unissent: (a) qualité de membre des nations participant à cette Conférence, (b) admission de nouveaux membres, (c) retrait, (d) suspension et expulsion.

Membres et admission de nouveaux membres

Les puissances invitantes n'ont [illegible] aucun [illegible] ment au Chapitre III se rapportant aux membres, tandis que les Gouvernements suivants [illegible] ont fait parvenir leurs observations et propositions au Comité: l'Australie, la Bolivie, le Brésil, le Chili, le Costa-Rica, l'Equateur, l'Egypte, la France, le Guatemala, le Honduras, le Mexique, les Pays-Bas, la Norvège, le Commonwealth des Philippines, l'Uruguay et le Venezuela.

1. Membres originaires de l'Organisation

Abordons le premier paragraphe du texte que nous recommandons et rapprochons-le du deuxième paragraphe. Nous voyons qu'une distinction s'est établie entre les membres originaires et les membres à venir. Tandis que pour les premiers, la participation à l'Organisation est considérée comme acquise de droit, celle des autres est soumise à des conditions. Il a été cependant bien compris que cette distinction n'impliquait aucune discrimination contre les membres futurs mais s'imposait par la nature des choses; avant de pouvoir admettre des membres nouveaux il faut que l'Organisation existe, ce qui implique la présence de membres originaires. La définition adoptée servirait d'autre part à calmer les appréhensions de certaines nations participant à nos travaux, qui ne sont pas à proprement parler des Etats et, de ce fait, pourraient se voir dénier le droit d'être membres de l'Organisation.

2. Admission de Nouveaux Membres

Signalons tout de suite la position prise dans le débat par la Délégation de l'Uruguay et dans une moindre mesure, par d'autres. Fidèle au principe de l'universalité de l'Organisation, elle en déduisait cette conséquence que toutes les communautés devraient être membres de l'Organisation et ensuite la participation obligatoire, c'est-à-dire que le choix ne serait laissé à aucune nation d'entrer comme membre de l'Organisation ou de s'en retirer; de même la question de l'expulsion ne se poserait même pas.

D'autres délégations ont pensé que l'universalité ainsi comprise était un idéal vers lequel il convenait de tendre, mais auquel il ne fallait pas s'attacher indéfectiblement.

En outre, le Comité eut à considérer deux autres problèmes fondamentaux: (1) le rapport existant entre la qualité de membre et l'observation des principes et des obligations mentionnés dans la Charte et (2) la mesure où il convient de déterminer les limites dans lesquelles l'Organisation exercerait son pouvoir discrétionnaire en ce qui concerne l'admission de nouveaux membres.

Empressons-nous de dire que l'opinion unanime du Comité était qu'une adhésion aux principes de la Charte et une acceptation totale des obligations qui en découlent, étaient des conditions essentielles de la participation des Etats à l'Organisation.

Toutefois, deux tendances principales s'étaient manifestées dans les discussions. D'un côté, il y avait ceux qui se déclaraient en faveur de l'insertion dans la Charte de conditions précises auxquelles les nouveaux membres devraient satisfaire notamment en ce qui concerne le régime et la politique des divers gouvernements. De l'autre côté, il y avait ceux qui soutenaient que la Charte ne devait pas sans raison limiter l'Organisation dans ses décisions concernant les demandes d'admission, et affirmaient que l'Organisation elle-même serait mieux inspirée pour juger de l'attitude des candidats à l'admission.

Les termes "tous les Etats épris d'un idéal de paix" généralement jugés insuffisants, ont été maintenus, tandis qu'on a donné une définition plus précise des conditions à remplir pour devenir membre. Pour entrer dans l'Organisation, il ne suffit pas de se déclarer "épris d'un idéal de paix"

Cette notion a été considérée comme [illegible]
Il fallait aussi prouver deux choses: qu'on était prêt à accepter et à exécuter les obligations de la Charte et qu'on était en mesure de les accepter et de les exécuter.

C'était dire clairement que l'admission d'un membre nouveau serait soumise à un examen, mais le Comité ne crut pas devoir recommander l'énumération des éléments qui seraient à considérer dans cet examen. Il prit en considération les difficultés qu'il y aurait à évaluer les institutions politiques des Etats et craignit que la mention dans la Charte d'un examen de cette nature ne portât atteinte au principe de la non-intervention ou si l'on aime mieux, de la non-ingérence. Cela n'impliquait pas cependant que, lorsqu'il s'agirait de se former un jugement sur l'opportunité de l'admission d'un membre nouveau, des considérations de tout ordre ne pussent entrer en ligne de compte.

Ici, nous devons faire mention d'un amendement français visant la neutralité. Le délégué français, en le soutenant, avait déclaré que la neutralité était incompatible avec la qualité de membre. C'est ce qu'impliquait le paragraphe 2 en question, puisqu'un Etat neutre, s'il était conséquent avec lui-même, ne pourrait pas remplir certaines des obligations les plus importantes de la Charte, notamment celle de prêter main forte pour repousser ou punir un agresseur. Le Comité a considéré que cette incompatibilité, si elle devait être expressément mentionnée dans la Charte, devrait l'être plutôt au Chapitre II et a renvoyé l'amendement français au Comité I/1.

Pour conclure nos commentaires sur cette partie du Chapitre III, nous devons ajouter que ses dispositions sont devenues plus flexibles. Le texte adopté énonce plus clairement que le texte original de Dumbarton Oaks les conditions requises pour devenir membre et considérées par les délégués comme fondamentales; il constitue ainsi, pour l'Assemblée Générale et le Conseil de Sécurité, un guide plus sûr pour déterminer l'éligibilité des nouveaux membres.

3. Retrait des membres

Les questions de retrait, d'expulsion et de suspension avaient en commun le problème suivant:

> Un Etat-membre peut-il cesser d'être membre, soit de sa propre initiative, soit à la suite de mesures prises contre lui par l'Organisation?

Les arguments contre le retrait étaient: (1) qu'il serait contraire à l'idée d'universalité. (Mais, l'universalité, comme on l'a vu, n'a été généralement acceptée que comme un idéal ou un but à atteindre.) (2) Que le retrait procurerait aux membres récalcitrants la possibilité d'obtenir des concessions de l'Organisation en menaçant de la quitter. (3) Que le retrait serait un moyen d'échapper à ses obligations en quittant l'Organisation.

Au cours de la discussion, deux tendances d'insertion du droit de retrait dans la Charte s'étaient manifestées: la première recommandait une clause envisageant le retrait pur et simple, et la deuxième suggérait l'adoption d'une clause ne permettant le retrait que dans deux cas bien définis: 1) lorsque les droits et obligations d'un Membre sont modifiés par un amendement qu'il n'approuve pas et qu'il n'est pas en mesure d'accepter, et 2) lorsqu'un amendement dûment accepté par la majorité nécessaire de l'Assemblée ou d'une Conférence spéciale n'obtient pas la ratification obligatoire pour son entrée en vigueur.

Après avoir pesé les arguments à l'appui de ces deux thèses, le Comité s'est prononcé contre l'insertion dans la Charte d'une clause de retrait.

Certains délégués ont renouvelé leur déclaration qu'ils étaient fondamentalement opposés à l'idée même du retrait, étant partisans de l'universalité, et il leur a paru naturel de voter contre une insertion dans la Charte d'une clause prévoyant le retrait.

Un grand nombre ont estimé que si dans des circonstances exceptionnelles telles celles visées dans certaines propositions, la faculté de retrait paraissait admissible et conforme à l'esprit même de la Charte, elle ne pouvait sans inconvénients être reconnue de façon générale. Même limitée à des hypothèses déterminées, difficiles du reste à énumérer limitativement, une mention expresse de retrait, insérée dans la Charte, risquait de faire apparaître le retrait de certains membres comme normal ou probable alors qu'au contraire un fonctionnement raisonnable de la Charte notamment en matière de révision était de nature à le rendre inutile. Après une longue discussion le Comité fut d'avis qu'il n'y avait pas lieu d'insérer dans la Charte une clause relative au retrait et que la pensée devait exprimée par le texte suivant dont il décida l'insertion au rapport:

"Le Comité est d'avis qu'il n'y a pas lieu d'introduire dans la Charte une disposition expresse permettant ou interdisant le retrait des membres de l'Organisation. Le Comité considère que le devoir le plus élevé des nations qui deviendront membres de l'Organisation est de collaborer d'une façon continue dans cette Organisation au maintien de la paix et de la sécurité universelles. Si, toutefois, un membre de l'Organisation s'estime contraint, en raison de circonstances exceptionnelles, de se retirer et de laisser aux autres membres la tâche de maintenir la paix et la sécurité internationales, l'Organisation n'entend pas obliger ce membre à continuer sa collaboration dans l'Organisation.

"Il est évident, cependant, que le retrait des membres, ou tout autre forme de dissolution de l'Organisation, deviendrait inévitable si celle-ci, décevant l'espoir de l'humanité, se révélait incapable de maintenir la paix ou ne pouvait le faire qu'au détriment du droit et de la justice.

"L'Organisation ne chercherait pas non plus à contraindre un membre à rester dans l'Organisation, si ses droits et obligations en tant que membre étaient modifiés par un amendement à la Charte qui n'aurait pas reçu son assentiment et qu'il s'estimerait incapable d'accepter, ou si un amendement, dûment accepté par l'Assemblée à la majorité nécessaire ou par une conférence générale, ne recevait pas le nombre de ratifications exigé pour son entrée en vigueur.

"C'est en raison de ces considérations que le Comité a décidé de ne pas recommander l'insertion dans la Charte d'une clause formelle interdisant ou permettant expressément le retrait."

4. Expulsion et suspension

L'expulsion et la suspension donnèrent naissance à un long échange de vues et un sous-comité spécial fut chargé d'étudier ces importantes questions.

Dans les Propositions de Dumbarton Oaks la matière de l'expulsion se trouvait traitée exclusivement dans le Chapitre V relatif à l'Assemblée Générale. Le Comité, d'accord avec les Présidents des Commissions I et II, et deux des Comités intéressés ainsi que le Comité de Coordination, fut d'avis qu'il convenait d'inscrire au Chapitre III, relatif à la qualité de membres, les principes suivant lesquels cette qualité pouvait être perdue ou affectée et de tenir ces principes séparés des questions de procédure. Le texte de base, qui réflétait à cet égard les dispositions de Dumbarton Oaks, fut rédigé comme suit

"3. L'Organisation pourra à tous moments suspendre l'exercice des droits et privilèges conférés aux membres de l'Organisation pour tout membre contre lequel auront été prises des mesures préventives ou coercitives par le Conseil de Sécurité. L'exercice de ces droits et privilèges pourra être restitué conformément à la procédure fixée au Chapitre _____, paragraphe_____."

"4. L'Organisation pourra exclure de son sein tout membre qui persisterait à violer les principes de la Charte."

(On se rappellera que le paragraphe 3 de la Section B du Chapitre V du Plan de Dumbarton Oaks, concernant les questions de suspension et d'expulsion était le suivant:

"L'Assemblée Générale devrait, sur la recommandation du Conseil de Sécurité, avoir le pouvoir de suspendre l'exercice de tous les droits et privilèges conférés aux membres de l'Organisation pour tout membre contre lequel auraient été prises des mesures préventives ou coercitives par le Conseil de Sécurité. L'exercice des droits et privilèges ainsi suspendu, pourrait être restitué par décision du Conseil de Sécurité. L'Assemblée Générale devrait avoir le pouvoir, sur recommandation du Conseil de Sécurité, d'exclure de l'Organisation tout membre qui persisterait à violer les principes de la Charte.")

Lorsque cette question fut portée devant le Comité tout entier, les membres en faveur de l'expulsion expliquèrent que c'étaient tout d'abord la paix et la sécurité, et non l'universalité qui constituaient les buts de l'Organisation; l'expulsion ne s'appliquerait qu'aux Etats-membres reconnus incorrigibles qui violeraient d'une manière continue ou grave les principes de la Charte; en ce qui concerne de tels Etats il était nécessaire de déclarer, d'une manière absolument claire, l'attitude que l'Organisation prendrait à leur égard; le maintien de la qualité de membre pendant qu'un Etat est suspendu pourrait empêcher l'Organisation d'agir assez sévèrement contre de tels Etats; l'absence du pouvoir d'expulsion pourrait permettre à un Etat-membre d'agir de concert avec un Etat non-membre en vue de faire obstacle au fonctionnement de l'Organisation. C'est à tort que certains soulignaient que l'expulsion, à l'encontre de la suspension, délivrait le membre exclus de toutes les obligations imposées aux Etats-membres; en fait, en vertu des principes inscrits dans la Charte, ils demeuraient soumis à diverses obligations imposées aux Etats non-membres dans la mesure où elles intéressaient le maintien de la Paix. A tort aussi invoquait-on le caractère irrémédiable d'une telle mesure. Bien que de nature définitive l'expulsion ne pouvait faire obstacle à une réadmission ultérieure si les circonstances le justifient.

Ceux qui étaient en faveur d'omettre de la Charte toute référence à l'expulsion, soutenaient que celle-ci serait incompatible avec le concept d'universalité qui suppose l'admission éventuelle de tous les membres dans l'Organisation; elle causerait plus d'inconvénients pour l'Organisation elle-même que pour l'Etat intéressé; créerait un centre d'opposition à l'Organisation autour duquel se réuniraient les autres Etats mécontents; forcerait les Etats-membres à rompre toutes relations diplomatiques et autres avec l'Etat expulsé; empêcherait toute réconciliation entre l'Organisation et l'Etat exclus; et quoi qu'on en dise, s'avérerait moins sévère dans ses efforts que la suspension.

A condition que les termes de Dumbarton Oaks fussent quelque peu élargis, cette institution remplirait tous les buts de l'expulsion sans délier l'Etat pénalisé de ses obligations, comme le ferait l'expulsion, ni fermer la porte à une réconciliation ultérieure.

A la séance du 25 mai, du Comité I/2, une proposition d'insérer dans la Charte une disposition prévoyant l'expulsion, fut approuvée par une majorité simple mais fut rejetée parce qu'elle n'avait pas reçu l'appui des deux-tiers des délégués présents et votants.

Le Comité fut amené à reconsidérer cette décision qui lui fut renvoyée par le Comité de Direction sur un point de procédure. Au cours de cette nouvelle discussion, il apparut

que l'expulsion pourrait trouver une certaine justification dans le fait que des violations réitérées de la Charte, impliquent souvent, pour le gouvernement qui s'en rend coupable, l'approbation de son peuple tout entier. Une nation amenée à de tels sentiments ne pourrait évidemment plus être qualifiée "éprise d'un idéal de paix" et perdrait donc la qualité essentielle à la participation dans l'Organisation.

A cet argument, divers adversaires de l'expulsion ajoutèrent le désir de ne pas imposer leur point de vue à la majorité favorable au texte de Dumbarton Oaks et le vote final conclut donc à l'inclusion dans la Charte, d'une clause d'expulsion ainsi conçue:

> L'Organisation pourra exclure de son sein tout membre qui persisterait à violer les principes de la Charte.

Certains délégués votèrent contre cette décision par fidélité au principe de l'universalité.

La question de la suspension, comme on a pu le noter, a été liée dès l'abord à celle de l'expulsion; aussi lorsque le Comité eut refusé d'approuver par la majorité des deux-tiers des voix la clause relative à l'expulsion, il adopta à vrai dire, à une forte majorité, un texte étendant la suspension à tous les cas de violation grave ou réitérée. Mais lorsque l'expulsion fut en définitive acceptée par le Comité, la soustraction des mots "ou qui auront violé les principes de la Charte d'une façon grave et persistante" fut jugée opportune, ce qui amena le Comité à sa deuxième séance du 17 juin, à adopter à l'unanimité le texte de base cité plus haut et ici reproduit:

> L'Organisation pourra à tout moment suspendre l'exercice des droits et privilèges conférés aux membres de l'Organisation pour tout membre contre lequel auront été prises des mesures préventives ou coercitives par le Conseil de Sécurité. L'exercice de ces droits et privileges pourra être restitué conformément à la procédure fixée au Chapitre .....paragraphe.....

Les modalités de restauration des droits et privilèges furent laissées à l'examen d'une autre Commission.

Les Etats suivants avaient soumis des amendements au paragraphe 3 de la Section B, du Chapitre V: l'Australie, la Belgique, le Brésil, la République Dominicaine, l'Equateur, l'Egypte, le Honduras, le Mexique, les Pays-Bas, la Nouvelle-Zélande, la Norvège, l'Uruguay et le Vénézuéla. Ces amendements

ont été examinés en détail par notre Sous-comité et notre Comité, au cours des débats sur l'expulsion et la suspension; les décisions exposées plus haut fixent implicitement leur sort.

Tel est, Messieurs les Délégués, le rapport que nous avons l'honneur de soumettre à votre appréciation. Nous avons fait de notre mieux pour faire ressortir, au cours de notre exposé, les différentes argumentations des distingués délégués qui ont exprimé les points de vue de leur pays sur les matières en discussion. Nous sommes prêts à reconnaître qu'il a pu nous arriver de ne pas refléter en toutes occasions les vues exprimées, et nous désirons pour finir, nous référer à "l'AVERTISSEMENT" donné au début de ce rapport, en exprimant l'espoir, que la procédure à laquelle nous avons dû nous soumettre, sera acceptable à tous, étant donné les limites qui nous sont imposées par la nécessité de terminer à temps nos travaux.

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COMMISSION I General Provisions

Comité 2 Membres, Amendements et Secrétariat

RAPPORT DU RAPPORTEUR DU COMITE I/2

SUR LE CHAPITRE III (MEMBRES)

(avec les modifications présentées par les membres du Comité

Le Chapitre III du Plan de Dumbarton Oaks était ainsi conçu:

"Devra pouvoir être membre de l'Organisation tout Etat épris de l'idéal de Paix."

Ce texte, qui a été élargi au cours de nos discussions, le Comité I/2 désire le présenter à la Commission I, sous la forme suivante:

"Sont membres originaires de l'Organisation les Etats signataires de la Charte dont la ratification aura devenue effective conformément aux termes du Chapitre , Article ";

"L'Organisation est ouverte à tous les Etats épris d'un idéal de paix qui acceptent les obligations contenues dans la Charte et qui, au jugement de l'Organisation, sont aptes et résolus à les exécuter".

"L'Organisation pourra à tous moments suspendre l'exercice des droits et privilèges conférés aux membres de l'Organisation pour tout membre contre lequel auront été prises des mesures préventives ou coercitives par le Conseil de Sécurité. L'exercice de ces droits et privilèges pourra être restitué conformément à la procédure fixée au Chapitre..... paragraphe....."

"L'Organisation pourra exclure de son sein tout membre qui persisterait à violer les principes de la Charte".

Les travaux du Comité I/2 ont porté sur les questions suivantes que nous considérerons successivement, sans négliger d'établir, quand cela sera nécessaire, les liens naturels qui les

unissent: (a) qualité de membre des nations participant à cette Conférence, (b) admission de nouveaux membres, (c) retrait, (d) suspension et expulsion.

Membres et admission de nouveaux membres

Les puissances invitantes n'ont [illegible] aucun [illegible] ment au Chapitre III se rapportant aux membres, tandis que les Gouvernements suivants [illegible] ont fourni des observations et propositions au Comité: l'Australie, la Bolivie, le Brésil, le Chili, le Costa-Rica, l'Equateur, l'Egypte, la France, le Guatemala, le Honduras, le Mexique, les Pays-Bas, la Norvège, le Commonwealth des Philippines, l'Uruguay et le Venezuela.

1. Membres originaires de l'Organisation

Abordons le premier paragraphe du texte que nous recommandons et rapprochons-le du deuxième paragraphe. Nous voyons qu'une distinction s'est établie entre les membres originaires et les membres à venir. Tandis que pour les premiers, la participation à l'Organisation est considérée comme acquise de droit, celle des autres est soumise à des conditions. Il a été cependant bien compris que cette distinction n'impliquait aucune discrimination contre les membres futurs mais s'imposait par la nature des choses; avant de pouvoir admettre des membres nouveaux il faut que l'Organisation existe, ce qui implique la présence de membres originaires. La définition adoptée servirait d'autre part à calmer les appréhensions de certaines nations participant à nos travaux, qui ne sont pas à proprement parler des Etats et, de ce fait, pourraient se voir dénier le droit d'être membres de l'Organisation.

2. Admission de Nouveaux Membres

Signalons tout de suite la position prise dans le débat par la Délégation de l'Uruguay et dans une moindre mesure, par d'autres. Fidèle au principe de l'universalité de l'Organisation, elle en déduisait cette conséquence que toutes les communautés devraient être membres de l'Organisation et ensuite la participation obligatoire, c'est-à-dire que le choix ne serait laissé à aucune nation d'entrer comme membre de l'Organisation ou de s'en retirer; de même la question de l'expulsion ne se poserait même pas.

D'autres délégations ont pensé que l'universalité ainsi comprise était un idéal vers lequel il convenait de tendre, mais auquel il ne fallait pas s'attacher indéfectiblement.

En outre, le Comité eut à considérer deux autres problèmes fondamentaux: (1) le rapport existant entre la qualité de membre et l'observation des principes et des obligations mentionnés dans la Charte et (2) la mesure où il convient de déterminer les limites dans lesquelles l'Organisation exercerait son pouvoir discrétionnaire en ce qui concerne l'admission de nouveaux membres.

Empressons-nous de dire que l'opinion unanime du Comité était qu'une adhésion aux principes de la Charte et une acceptation totale des obligations qui en découlent, étaient des conditions essentielles de la participation des Etats à l'Organisation.

Toutefois, deux tendances principales s'étaient manifestées dans les discussions. D'un côté, il y avait ceux qui se déclaraient en faveur de l'insertion dans la Charte de conditions précises auxquelles les nouveaux membres devraient satisfaire notamment en ce qui concerne le régime et la politique des divers gouvernements. De l'autre côté, il y avait ceux qui soutenaient que la Charte ne devait pas sans raison limiter l'Organisation dans ses décisions concernant les demandes d'admission, et affirmaient que l'Organisation elle-même serait mieux inspirée pour juger de l'attitude des candidats à l'admission.

Les termes "tous les Etats épris d'un idéal de paix" généralement jugés insuffisants, ont été maintenus, tandis qu'on a donné une définition plus détaillée des conditions à remplir pour devenir membre. Pour entrer dans l'Organisation, il ne suffit pas de se déclarer "épris d'un idéal de paix"

[illegible] Il fallait aussi prouver deux choses: qu'on était prêt à accepter et à exécuter les obligations de la Charte et qu'on était en mesure de les accepter et de les exécuter.

C'était dire clairement que l'admission d'un membre nouveau serait soumise à un examen, mais le Comité ne crut pas devoir recommander l'énumération des éléments qui seraient à considérer dans cet examen. Il prit en considération les difficultés qu'il y aurait à évaluer les institutions politiques des Etats et craignit que la mention dans la Charte d'un examen de cette nature ne portât atteinte au principe de la non-intervention ou - si l'on aime mieux, de la non-ingérence. Cela n'impliquait pas cependant que, lorsqu'il s'agirait de se former un jugement sur l'opportunité de l'admission d'un membre nouveau, des considérations de tout ordre ne pussent entrer en ligne de compte.

Ici, nous devons faire mention d'un amendement français visant la neutralité. Le délégué français, en le soutenant, avait déclaré que la neutralité était incompatible avec la qualité de membre. C'est ce qu'impliquait le paragraphe 2 en question, puisqu'un Etat neutre, s'il était conséquent avec lui-même, ne pourrait pas remplir certaines des obligations les plus importantes de la Charte, notamment celle de prêter main forte pour repousser ou punir un agresseur. Le Comité a considéré que cette incompatibilité, si elle devait être expressément mentionnée dans la Charte, devrait l'être plutôt au Chapitre II et a renvoyé l'amendement français au Comité I/1.

Pour conclure nos commentaires sur cette partie du Chapitre III, nous devons ajouter que ses dispositions sont devenues plus flexibles. Le texte adopté énonce plus clairement que le texte original de Dumbarton Oaks les conditions requises pour devenir membre et considérées par les délégués comme fondamentales; il constitue ainsi, pour l'Assemblée Générale et le Conseil de Sécurité, un guide plus sûr pour déterminer l'éligibilité des nouveaux membres.

3. Retrait des membres

Les questions de retrait, d'expulsion et de suspension avaient en commun le problème suivant:

> Un Etat-membre peut-il cesser d'être membre, soit de sa propre initiative, soit à la suite de mesures prises contre lui par l'Organisation?

Les arguments contre le retrait étaient: (1) qu'il serait contraire à l'idée d'universalité. (Mais, l'universalité, comme on l'a vu, n'a été généralement acceptée que comme un idéal ou un but à atteindre.) (2) Que le retrait procurerait aux membres récalcitrants la possibilité d'obtenir des concessions de l'Organisation en menaçant de la quitter. (3) Que le retrait serait un moyen d'échapper à ses obligations en quittant l'Organisation.

Au cours de la discussion, deux tendances d'insertion du droit de retrait dans la Charte s'étaient manifestées: la première recommandait une clause envisageant le retrait pur et simple, et la deuxième suggérait l'adoption d'une clause ne permettant le retrait que dans deux cas bien définis: 1) lorsque les droits et obligations d'un Membre sont modifiés par un amendement qu'il n'approuve pas et qu'il n'est pas en mesure d'accepter, et 2) lorsqu'un amendement dûment accepté par la majorité nécessaire de l'Assemblée ou d'une Conférence spéciale n'obtient pas la ratification obligatoire pour son entrée en vigueur.

Après avoir passé les arguments à l'appui de ces deux thèses, le Comité s'est prononcé contre l'insertion dans la Charte d'une clause de retrait.

Certains délégués ont renouvelé leur déclaration qu'ils étaient fondamentalement opposés à l'idée même du retrait étant partisans de l'universalité, et il leur a paru naturel de voter contre une insertion dans la Charte d'une clause prévoyant le retrait.

Un grand nombre ont estimé que si dans des circonstances exceptionnelles telles celles visées dans certaines propositions, la faculté de retrait paraissait admissible et conforme à l'esprit même de la Charte, elle ne pouvait sans inconvénients être reconnue de façon générale. Même limitée à des hypothèses déterminées, difficiles du reste à énumérer limitativement, une mention expresse de retrait, insérée dans la Charte, risquait de faire apparaître la retrait de certains membres comme normal ou probable alors qu'au contraire un fonctionnement raisonnable de la Charte notamment en matière de révision était de nature à le rendre inutile. Après une longue discussion le Comité fut d'avis qu'il n'y avait pas lieu d'insérer dans la Charte une clause relative au retrait et que sa pensée serait exprimée par le texte suivant dont il décida l'insertion au rapport:

> "Le Comité est d'avis qu'il n'y a pas lieu d'introduire dans la Charte une disposition expresse permettant ou interdisant le retrait des membres de l'Organisation. Le Comité considère que le devoir le plus élevé des nations qui deviendront membres de l'Organisation est de collaborer d'une façon continue dans cette Organisation au maintien de la paix et de la sécurité universelles. Si, toutefois, un membre de l'Organisation s'estime contraint, en raison de circonstances exceptionnelles, de se retirer et de laisser aux autres membres la tâche de maintenir la paix et la sécurité internationales, l'Organisation n'entend pas obliger ce membre à continuer sa collaboration dans l'Organisation.
>
> "Il est évident, notamment, que le retrait des membres, ou tout autre forme de dissolution de l'Organisation, deviendrait inévitable si celle-ci, décevant l'espoir de l'humanité, se révélait incapable de maintenir la paix ou ne pouvait le faire qu'au détriment du droit et de la justice.
>
> "Un membre ne serait pas non plus contraint à rester dans l'Organisation, si ses droits et obligations en tant que membre étaient modifiés par un amendement à la Charte qui n'aurait pas reçu son assentiment et qu'il s'estimerait incapable d'accepter, ou si un amendement, dûment accepté par l'Assemblée à la majorité nécessaire ou par une conférence générale, ne recevait pas le nombre de ratifications exigé pour son entrée en vigueur.

"C'est en raison de ces considérations que le Comité a décidé de ne pas recommander l'insertion dans la Charte d'une clause formelle interdisant ou permettant expressément le retrait."

4. Expulsion et suspension

L'expulsion et la suspension donnèrent naissance à un long échange de vues et un sous-comité spécial fut chargé d'étudier ces importantes questions.

Dans les Propositions de Dumbarton Oaks la matière de l'expulsion se trouvait traitée exclusivement dans le Chapitre V relatif à l'Assemblée Générale. Le Comité, d'accord avec les Présidents des Commissions I et II, et deux des Comités intéressés ainsi que le Comité de Coordination, fut d'avis qu'il convenait d'inscrire au Chapitre III, relatif à la qualité de membre, les principes suivant lesquels cette qualité pouvait être perdue ou affectée et de tenir ces principes séparés des questions de procédure. Le texte de base, qui s'inspirait à cet égard des dispositions de Dumbarton Oaks, fut rédigé comme suit:

"3. L'Organisation pourra à tous moments suspendre l'exercice des droits et privilèges conférés aux membres de l'Organisation pour tout membre contre lequel auront été prises des mesures préventives ou coercitives par le Conseil de Sécurité. L'exercice de ces droits et privilèges pourra être restitué conformément à la procédure fixée au Chapitre _____, paragraphe_____."

"4. L'Organisation pourra exclure de son sein tout membre qui persisterait à violer les principes de la Charte."

(On se rappellera que le paragraphe 3 de la Section B du Chapitre V du Plan de Dumbarton Oaks, concernant les questions de suspension et d'expulsion était le suivant:

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Lorsque cette question fut portée devant le Comité tout entier, les membres en faveur de l'expulsion expliquèrent que c'étaient tout d'abord la paix et la sécurité, et non l'universalité qui constituaient les buts de l'Organisation; l'expulsion ne s'appliquerait qu'aux Etats-membres reconnus incorrigibles qui violeraient d'une manière continue ou grave les principes de la Charte; en ce qui concerne de tels Etats, il était nécessaire de déclarer, d'une manière absolument claire, l'attitude que l'Organisation prendrait à leur égard; le maintien de la qualité de membre pendant qu'un Etat est suspendu pourrait empêcher l'Organisation d'agir assez sévèrement contre de tels Etats; l'absence du pouvoir d'expulsion pourrait permettre à un Etat-membre d'agir de concert avec un Etat non-membre en vue de faire obstacle au fonctionnement de l'Organisation. C'est à tort que certains soulignaient que l'expulsion, à l'encontre de la suspension, déliait le membre exclus de toutes les obligations imposées aux Etats-membres; en fait, en vertu des principes inscrits dans la Charte, ils demeuraient soumis à diverses obligations imposées aux Etats non-membres dans la mesure où elles intéressaient le maintien de la Paix. A tort aussi invoquait-on le caractère irremédiable d'une telle mesure. Bien que de nature définitive l'expulsion ne pouvait faire obstacle à une réadmission ultérieure si les circonstances la justifient.

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Les modalités de restauration des droits et privilèges furent laissées à l'examen d'une autre Commission.

Les Etats suivants avaient soumis des amendements au paragraphe 3 de la Section B, du Chapitre V: l'Australie, la Belgique, le Brésil, la République Dominicaine, l'Equateur, l'Egypte, le Honduras, le Mexique, les Pays-Bas, la Nouvelle-Zélande, la Norvège, l'Uruguay et le Vénézuéla. Ces amendements

ont été examinés en détail par notre Sous-comité et notre Comité, au cours des débats sur l'exclusion et la suspension; les décisions exposées plus haut fixent implicitement leur sort.

Tel est, Messieurs les Délégués, le rapport que nous avons l'honneur de soumettre à votre appréciation. Nous avons fait de notre mieux pour faire ressortir, au cours de notre exposé, les différentes argumentations des distingués délégués qui ont exprimé les points de vue de leur pays sur les matières en discussion. Nous sommes prêts à reconnaître qu'il a pu nous arriver de ne pas refléter en toutes occasions les vues exprimées, et nous désirons pour finir, nous référer à "l'AVERTISSEMENT" donné au début de ce rapport, en exprimant l'espoir, que la procédure à laquelle nous avons dû nous soumettre, sera acceptable à tous, étant donné les limites qui nous sont imposées par la nécessité de terminer à temps nos travaux.

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ABBREVIATIONS USED

UN United Nations
UNCIO United Nations Conference on International Organization
UNCJ United Nations Committee of Jurists

NOTE

Roman numerals indicate volumes
Arabic numerals indicate pages

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